

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

<b>IN RE: ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION</b>	<b>Master File No. 2:12-MD-02327 MDL 2327</b>  <b>JOSEPH R. GOODWIN U.S. DISTRICT JUDGE</b>
<b>THIS DOCUMENT RELATES TO:</b>  <i>Patricia Boreni and Alan Boreni v. Ethicon, Inc. et al.</i>	<b>Case No. 2:15-cv-13965</b>

**PLAINTIFFS' OPPOSITION TO DEFENDANTS'  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants filed a Motion for Partial Summary Judgment on Plaintiffs' strict liability manufacturing defect claim (Count II), strict liability defective product claim (Count IV), strict liability design defect claim (Count V), common law fraud claim (Count VI), fraudulent concealment claim (Count VII), constructive fraud claim (Count VIII), negligent misrepresentation claim (Count IX), negligent infliction of emotional distress claim (Count X), breach of express warranty claim (Count XI), breach of implied warranty claim (Count XII), violation of consumer protection laws claim (Count XIII), gross negligence claim (Count XIV), and unjust enrichment claim (Count XV). Plaintiffs will not be pursuing these Counts at trial.

Defendants have not moved for summary judgment on Plaintiffs' negligence claim (Count I), strict liability-failure to warn claim (Count III), loss of consortium claim (Count XVI), punitive damages claim (Count XVII), or discovery rule and tolling claim (Count XVIII). Plaintiffs will be pursuing these claims at trial.

As Plaintiff is not pursuing the counts listed in Defendants' Motion for Partial Summary Judgment, Defendants' Motion should be dismissed as moot. Because this Response in Opposition

is self-explanatory, Plaintiff requests to be relieved from submitting a formal Memorandum of Law.

WHEREFORE, for these reasons Plaintiff respectfully requests that this Court enter an order denying Defendants' Motion for Partial Summary Judgment.

Respectfully submitted,

**KLINE & SPECTER, PC**



Dated: October 25, 2018

BY:

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**CERTIFICATE OF SERVICE**

I, Lee B. Balefsky, certify that on October 25, 2018, I electronically filed this document with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to CM/ECF participants registered to receive service in this MDL.

**KLINE & SPECTER, PC**

A handwritten signature in black ink, appearing to read "Lee B. Balefsky", is written above a horizontal line.

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Lee B. Balefsky, Esquire

Dated: October 25, 2018